Supreme Court, U.S.
FILED
JUN 11 2003
OFFICE OF THE CLERK

(2)

No. 02-1489

In the Supreme Court of the United States

LINDA HOLLINS, PETITIONER

v.

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether, after a district court remands a Social Security disability case to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. 405(g), an Administrative Law Judge (ALJ) is limited to deciding only the specific issues identified by the district court's decision, or whether the ALJ may reconsider other issues where doing so is not inconsistent with the district court's judgment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-15a) is unreported. The opinion of the district court (Pet. App. 16a-30a) is reported at 160 F. Supp. 2d 834. A previous opinion of the district court remanding the case to the Commissioner (Pet. App. 75a-78a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 17, 2002. A petition for rehearing was denied on January 10, 2003. The petition for a writ of certiorari was filed on April 7, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, provides disability insurance benefits to covered workers and, in certain circumstances, to the disabled widows and widowers of covered workers. The Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d)(1)(A). An individual may be found to be under a disability, moreover, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. 423(d)(2)(A). To qualify for widow's insurance benefits, a claimant must establish that she became disabled sometime between her 50th birthday and the seventh year following the death of her spouse. 42 U.S.C. 402(e)(1)(B), 402(e)(4).

Petitioner filed a claim for benefits as the disabled widow of a covered worker. Her claim was denied initially and on reconsideration. Pet. App. 96a. Petitioner then sought a hearing before an Administrative Law Judge (ALJ), who conducted the hearing in April, 1996. *Ibid.* The ALJ determined that petitioner had several physical impairments and limited intellectual functioning. *Id.* at 108a. Nonetheless, the ALJ determined that petitioner was not disabled. Petitioner's residual functional capacity, the ALJ found, permitted her to perform a significant number of light jobs. *Id.* at 106a-107a, 110a; see *id.* at 4a, 19a. The ALJ concluded

that petitioner's "capacity for light work has not been significantly compromised by the functional limitations imposed by her impairments." *Id.* at 107a.

Petitioner sought review in district court, arguing that the ALJ's determination was not supported by substantial evidence. Specifically, petitioner argued that she should have been found disabled based on the Social Security Administration's "Listing of Impairments." See 20 C.F.R. Pt. 404, Subpt. P, App. 1. The Listings identify impairments that are presumed to be so severe as to preclude all gainful activity. If a claimant has a listed impairment (and is not currently engaged in substantial gainful activity), the claimant generally will be found disabled without further inquiry. 20 C.F.R. 404.1520(d).[1] If the claimant's impairments do not meet the Listing requirements, however, the ALJ will evaluate her "residual functional capacity" and decide whether she can perform her former work or any other work. Such a claimant will be found disabled only if (a) she is functionally incapable, because

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[1] The Listings are employed at step three of the five-step sequential evaluation process the Commissioner uses to decide disability claims. See *Heckler* v. *Campbell*, 461 U.S. 458, 460-461 (1983); *Cleveland* v. *Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 804 (1999); *Bowen* v. *Yuckert*, 482 U.S. 137, 147-148 (1987). Under that process, a claimant can be found disabled or not disabled at various points. If that occurs, the evaluation does not proceed further. 20 C.F.R. 404.1520(a). At step one, the Commissioner asks whether the claimant is currently engaging in substantial gainful activity; if the claimant is, she is not disabled. 20 C.F.R. 404.1520(b). At step two, the Commissioner asks whether the claimant has a severe impairment, or combination of impairments, "which significantly limits" her "ability to do basic work activities," such as lifting, standing, and walking, 20 C.F.R. 404.1520(c); if the impairment or impairments are not so severe as to significantly limit such activities, the claimant is not disabled. *Ibid.*

of her impairment or combination of impairments, of performing the kind of work she has done in the past, and (b) she cannot perform any other work in the national economy, considering her residual functional capacity, age, education, and work experience. 20 C.F.R. 404.1520(e), 404.1520(f).[2]

In this case, petitioner argued that her combined physical and mental impairments were equivalent to the Listing for mental retardation, 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listing 12.05C. See Pet. App. 4a, 83a. In addition, petitioner argued that the ALJ should have found that she was illiterate. *Ibid.* Adopting the recommendations of a magistrate judge, *id.* at 79a-87a, the district court agreed that the ALJ had not addressed those issues with sufficient clarity, but declined to rule that petitioner's impairments were equivalent to Listing 12.05C (mental retardation). Pet. App. 75a-76a, 86a; see *id.* at 4a. Instead, the court remanded the case to the agency "for further proceedings." *Id.* at 75a.

2. On remand, the ALJ reconsidered the specific issues identified by the district court, taking new evidence and conducting a new hearing. The ALJ explained that, following a psychological examination, Dr. West had reported that petitioner's IQ test scores ranged from 68 to 79. Pet. App. 45a. However, Dr. West concluded that those scores were "invalid due to low effort, interest, and motivation on [petitioner's] part." *Ibid.* In addition, Dr. West found "no indication

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[2] The inquiry into whether the claimant can do her former work is step four of the five-step sequential evaluation process. 20 C.F.R. 404.1520(e). The inquiry into whether the impairment prevents the claimant "from doing any other work," considering her residual functional capacity, age, education, and work experience, is step five. 20 C.F.R. 404.1520(f).

of a formal thought disorder, hallucinations, or delusional thinking." *Id.* at 46a. Although petitioner suffered from depression, Dr. West stated that petitioner "would be able to relate appropriately with fellow workers and supervisors," could follow simple instructions, and could maintain adequate concentration to accomplish assigned tasks. *Ibid.* Dr. West concluded: "The findings indicate that [petitioner] would have minimal impairment in being able to deal with day to day work activity, given her current cognitive and psychological functioning." *Ibid.*

To determine whether petitioner's impairments "equalled" the Listing for mental retardation, Listing 12.05C, the ALJ also obtained the "medical expert opinion" of Dr. Serednesky. Pet. App. 47a. Dr. Serednesky reported that petitioner did not meet the Listing for mental retardation because "the subtest scatter between * * * IQ testing contained in the record * * * demonstrated malingering, the IQ scores conflicted with memory testing, and [petitioner] put forth no effort during the testing." *Ibid.* Dr. Serednesky also stated that "the record contained no data that would suggest medical equivalence to any Listing." *Ibid.* The ALJ therefore determined that petitioner did not meet Listing 12.05C. Pet. App. 56a-57a, 62a.

The ALJ further determined, however, that he had erred in his previous evaluation of petitioner's physical impairments. In particular, the ALJ concluded that petitioner did not have any severe physical impairments and that her non-exertional (*e.g.*, mental) impairments did not preclude substantial gainful activity. The ALJ explained that his earlier (pre-remand) finding that plaintiff could perform only a reduced range of light work was incorrect because it was based not on medical evidence but rather "on plaintiff's age and

general deconditioning," which are irrelevant to the determination of residual functional capacity. Pet. App. 48a, 49a; see *id.* at 102a. Examining the medical evidence in the record, the ALJ found that "the evidence documented no severe nerve or muscle damage which might cause significant weakness or limited movement." *Id.* at 52a-53a. The ALJ continued:

> The evidence of record documents no bony changes, muscle atrophy or weakness, or reflex or sensory changes. Accordingly, as there is no objective evidence of a significant physical impairment, and [petitioner] has refused to cooperate in an assessment of her physical condition, a "severe" physical impairment cannot be found.

Id. at 53a.[3] Relying on the testimony of a vocational expert, the ALJ concluded that there was a range of jobs that someone with petitioner's residual functional capacity could perform. *Id.* at 59a-61a. The ALJ therefore found that petitioner was not disabled. *Id.* at 64a.

3. Petitioner again sought review in district court. This time, petitioner argued that the ALJ was bound by the earlier determination that she did have severe physical impairments that greatly restricted the range of work she can do. Pet. App. 25a-26a; see *id.* at 5a. The district court disagreed, concluding that the earlier decision of the ALJ was no longer binding, because petitioner had sought judicial review and the court had entered an order reversing and remanding. *Id.* at 27a; see *id.* at 5a.

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[3] The ALJ had determined that a formal orthopedic evaluation was necessary. Pet. App. 49a. Petitioner, however, declined to participate in the evaluation based on the advice of counsel. *Id.* at 49a, 52a.

Petitioner also argued that the district court's initial decision established the law of the case regarding her physical capacity; in the alternative, she relied on issue preclusion. Pet. App. 27a. The district court rejected those arguments. Petitioner, the district court observed, could not rely on *res judicata* principles because critical requirements for issue preclusion—a final judgment on the merits and resolution of the specific issues as a "necessary" or "essential" component of that judgment—were absent. See *id.* at 27a-28a.

4. The court of appeals affirmed in an unpublished decision. Pet. App. 3a-15a. Before the court of appeals, petitioner did not argue that the ALJ was bound by his own earlier determination that petitioner had severe physical impairments. *Id.* at 5a. Instead, relying on the district court's earlier decision remanding the case, petitioner argued that reconsideration was barred by the law-of-the-case doctrine or *res judicata* (claim and issue preclusion). *Ibid.* The court of appeals rejected those arguments, explaining that a district court ruling is preclusive with respect to claims and issues only if there is a final judgment on the merits, and that issue preclusion applies only as to an issue "actually litigated and decided in the prior action" and only if "resolution of the issue was necessary and essential to a judgment on the merits." *Id.* at 5a-6a (citation omitted).

In this case, the court of appeals found that the district court's initial decision "did not constitute a decision on the merits regarding [petitioner's] residual functional capacity." Pet. App. 6a. To the contrary, the court explained, the decision addressed only "the two narrow errors committed by the ALJ in the initial hearing." *Ibid.* "The merit of the ALJ's determination regarding [petitioner's] physical capacity," the court continued, was merely "assumed" but not decided.

"The fact that the ALJ made certain factual findings" may have been important, the court explained, "but the truth of those findings" was not at issue. *Ibid.*

The court of appeals also rejected petitioner's argument that the ALJ had exceeded the scope of the district court's initial remand order. The court agreed that an agency may not deviate from the court's remand order in later administrative proceedings. Pet. App. 7a (citing *Sullivan* v. *Hudson*, 490 U.S. 877, 886 (1989)). But the court of appeals held that that limit "do[es] not preclude the ALJ from acting in ways that go beyond, but are not inconsistent with, the district court's opinion." *Ibid.* In this case, the court concluded that "[r]econsideration of [petitioner's] physical impairments was not inconsistent with any express or implied order of the district court." *Id.* at 7a-8a.

The court of appeals also observed that the ALJ did not need a mandate from a federal court to consider the extent of petitioner's physical impairments, because the power to do so derives from the legislative grant of authority contained in the Social Security Act. The court noted that the Social Security Administration has promulgated a regulation informing claimants that, upon remand by a federal court, "any issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case." Pet. App. 8a (quoting 20 C.F.R. 404.983). The court held that "[t]he ALJ therefore did not act outside his authority" in examining petitioner's "physical capacity." *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any

other court of appeals. Further review therefore is not warranted.

1. Petitioner argues (Pet. 10) that the court of appeals' unpublished decision is inconsistent with this Court's decision in *Sullivan* v. *Hudson*, 490 U.S. 877, 886 (1984), and conflicts with *Chrupcala* v. *Heckler*, 829 F.2d 1269 (3d Cir. 1987). According to petitioner, "[w]here a remand order expressly states the terms of the remand, then neither the Appeals Council nor the ALJ may revisit previous determinations on other issues." Pet. 10. Petitioner argues that "the original remand order" in this case "was for such a limited, specific purpose," and therefore foreclosed reconsideration of issues "beyond the scope of [that] order." *Ibid.* Those arguments lack merit.

a. In *Hudson*, this Court observed that "the district court's remand order will often include detailed instructions concerning the scope of remand, the evidence to be adduced, and the legal or factual issues to be addressed." 490 U.S. at 885. In those circumstances, the Court noted, "[d]eviation from the court's remand order in the subsequent administrative proceedings is itself legal error, subject to reversal on further judicial review." *Id.* at 886; see also *Mefford* v. *Gardner*, 383 F.2d 748, 758 (6th Cir. 1967) (noting "the general rule that, on the remand of a case after appeal, it is the duty of the lower court, or the agency from which appeal is taken, to comply with the mandate of the court and to obey the directions therein without variation and without departing from such directions"). As the court of appeals explained in this case, however, *Hudson* did not address the extent to which an ALJ might consider issues "that go beyond, but are not inconsistent with, the district court's opinion." Pet. App. 7a.

Indeed, *Hudson* did not involve any issue concerning the limits on an ALJ's authority after a remand; rather, the issue in *Hudson* was whether the Equal Access to Justice Act, 28 U.S.C. 2412 *et seq.*, entitles a Social Security claimant to attorney's fees for representation in administrative proceedings before the agency following a district court remand. 490 U.S. at 879. *Hudson* thus had no reason to address, and did not address, the effect of the Commissioner's regulations, including 20 C.F.R. 404.983, which provides that, after "a Federal court remands a case to the Commissioner for further consideration," any "issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case."[4]

In any event, remands (whether to a lower court or an administrative agency) generally can be categorized either as "limited" or "general" in scope. See, *e.g.*, *United States* v. *Washington*, 172 F.3d 1116, 1118 (9th Cir. 1999); *United States* v. *Campbell*, 168 F.3d 263, 265 (6th Cir.), cert. denied, 528 U.S. 882 (1999); *United States* v. *Young*, 66 F.3d 830, 835 (7th Cir. 1995). "Limited remands explicitly outline the issues to be addressed by the [lower] court and create a narrow framework within which the [lower] court must operate. * * * General remands, in contrast, give [lower] courts authority to address all matters as long

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[4] Petitioner mistakenly argues that 20 C.F.R. 404.983 "does not apply to sentence four remands under 42 U.S.C. § 405(g)," the type of remand at issue here. Pet. 12. Petitioner identifies no support for such a conclusion, and nothing in the language of the regulation limits Section 404.983 to sentence six remands. See 54 Fed. Reg. 37,789 (1989). If the agency had wanted to limit the regulation to sentence six remands, it certainly could have done so.

as remaining consistent with the remand." *Campbell*, 168 F.3d at 265 (citation omitted). It is generally understood that, "[i]n the absence of an explicit limitation, [a] remand order is presumptively a general one." *Id.* at 268 (quoting *United States* v. *Moore*, 131 F.3d 595, 598 (6th Cir. 1997)).

That presumption has special force in the context of judicial review of agency action, for "the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the [agency] for reconsideration." *FPC* v. *Idaho Power Co.*, 344 U.S. 17, 20 (1952). The reviewing court's role, in other words, "is limited to considering whether the announced grounds for the agency decision comport with the applicable legal principles," *Port of Portland* v. *United States*, 408 U.S. 811, 842 (1972), not to limit the agency's authority to re-examine the case (perhaps through the receipt of new evidence) and identify other grounds for decision. See *INS* v. *Ventura*, 123 S. Ct. 353, 356 (2002).

Indeed, in *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947), this Court rejected the contrary view, upholding an agency decision that, following the Court's remand, reaffirmed the agency's initial decision on new grounds. See *id.* at 200-201. "After the remand was made," the Court explained, "the [agency] was bound to deal with the problem afresh, performing the function delegated to it by Congress. * * * Only in that way could the legislative policies embodied in the Act be effectuated." *Id.* at 201. General remands, moreover, are particularly appropriate in disability cases such as this one, because disability determinations turn on numerous variables, some of which change with the passage of time. To construe remand orders with undue rigidity would in many cases prejudice claimants—particularly those

with progressive diseases—by precluding consideration of additional evidence supporting their disability claims.

In this case, petitioner's argument rests on the mistaken premise that the district court's initial remand order was "limited" to the specific issues discussed in the district court's opinion. While the district court remanded the case to permit the agency to give further consideration to the equivalency issue—*i.e.*, petitioner's contention that her impairments should be considered the equivalent of the impairment described in Listing 12.05(C)—and petitioner's claim that she was illiterate, see Pet. App. 84a-86a, neither the magistrate judge's Report and Recommendation, nor the district court's order adopting that Report and Recommendation, contained detailed or specific instructions regarding the scope of the remand, the evidence to be adduced on remand, or limitations on the legal or factual issues that the ALJ could address. Instead, both simply concluded that the case should be remanded "for further proceedings pursuant to 42 U.S.C. § 405(g), sentence four." See Pet. App. 75a-76a, 86a.

Thus, as the court of appeals explained, "[r]econsideration of [petitioner]'s physical impairments was not inconsistent with any express or implied order of the district court." Pet. App. 7a-8a. In any event, whether or not the particular district court judgment at issue here contained language expressly or impliedly foreclosing the ALJ's consideration of a given matter is a highly fact-bound issue that does not warrant this Court's review. In fact, further review is especially unwarranted because resolution of that issue turns in the first instance on the district court's interpretation of its own prior judgment in the case, based on its familiarity with the prior and current proceedings, and the court of appeals sustained the district court's ruling.

The issues addressed by the ALJ on remand, moreover, *were* within the scope of the remand order even as petitioner would narrowly construe it. That order directed reconsideration of whether petitioner met the Listing for mental retardation, Listing 12.05C. Listing 12.05(C) provides that an individual will be presumed disabled if: (1) her IQ is between 60 and 70; (2) she has another physical or mental impairment that imposes "an additional and significant work-related limitation of function"; and (3) her mental deficiency manifested before age 22. 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listing 12.05C. Thus, in applying that Listing, the ALJ was permitted to examine not only petitioner's IQ but also her other physical and mental impairments, and to determine whether they impose "significant work-related limitation[s]." Nothing in the district court's remand order required that the ALJ, after having done so, *ignore* the resulting findings insofar as they relate to other disability issues (*e.g.*, ability to perform jobs in the national economy).

b. Contrary to petitioner's claims, the decision below does not conflict with the Third Circuit's decision in *Chrupcala* v. *Heckler*, *supra*, decided more than 15 years ago. In *Chrupcala*, the ALJ determined that the claimant had been disabled for a year and a half and awarded benefits for that period. Because the ALJ determined that the disability had ceased, however, he also denied the claim for continued benefits. The claimant sought judicial review of the determination that his disability had ended, and the district court remanded the case for a further administrative hearing. On remand, the ALJ determined that the claimant was not entitled to *any* period of disability. 829 F.2d at 1270-1271. Reversing, the court of appeals held that the ALJ lacked authority to examine issues on remand

other than those that were actually raised by the claimant in his civil action in district court. The court concluded that, absent adequate notice, the claimant had no reason to question the finality of the portion of the agency decision finding him disabled for a certain period of time, which was favorable to the claimant and therefore not subject to judicial review on the prior occassion. See *id.* at 1270, 1273-1274.

The court rested its decision in significant part, however, on the fact that the agency's regulations regarding remands at that time "provide[d] no clear guidance as to the scope of issues that may be reviewed when the district court remands a case to the Secretary." 829 F.2d at 1272 (discussing 20 C.F.R. 404.983 and 404.977 (1986)). After *Chrupcala* was decided, the agency amended its regulations to provide explicit guidance as to the scope of issues that may be reviewed by the agency following a remand. Thus, 20 C.F.R. 404.983 now states that, when a federal court remands a case to the Commissioner for further consideration, "[a]ny issues relating to [the claimant's] claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in [the] case." See 54 Fed. Reg. 37,791 (1989). In light of that amendment, it is doubtful that the Third Circuit would consider *Chrupcala* binding precedent today.

Chrupcala, moreover, involved action on remand quite different from the actions at issue here. In *Chrupcala*, the ALJ did not merely reach the same result on remand—a denial of benefits—based on new evidence and additional reasoning. Instead, the ALJ in *Chrupcala* reached a new result that *took away* an award of benefits that the agency had previously granted and that had not been at issue on appeal. 829

F.2d at 1271. Whatever *Chrupcala*'s current vitality, there is no reason to believe that the Third Circuit would extend the decision beyond that distinct context so as to preclude an ALJ from invoking alternative grounds to *reaffirm* the results of the ALJ's initial decision. See *Chenery*, 332 U.S. at 200-201; pp. 11-12, *supra*.[5]

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[5] Petitioner also contends (Pet. 10-11) that the decision below conflicts with *Ruiz* v. *Apfel*, 24 F. Supp. 2d 1045 (C.D. Cal. 1998). Because *Ruiz* is a district court decision, it does not implicate a circuit conflict. *Ruiz* is, in any event, distinguishable. In that case, the district court remanded the case to permit the ALJ to make complete credibility findings. *Id.* at 1050. On appeal from the remand decision, the district court relied on *Chrupcala* to hold that the ALJ had erred in going beyond that remand and re-deciding an issue that had previously been decided in the claimant's favor (and that, as a result, had not previously been addressed on judicial review). *Ibid.* The court recognized, however, that "[r]egulations promulgated after *Chrupcala* appear to conflict with its holding to some extent, in that they authorize the ALJ, in a case remanded by a federal court, to examine '[a]ny issues relating to your claim . . . whether or not they were raised in the administrative proceedings leading to the final decision in your case.'" *Id.* at 1050-1051 n.7 (quoting 20 C.F.R. 404.983). The district court therefore also relied on the fact that the order of the Social Security Administration Appeals Council in that case—which remanded the case to the ALJ—could not "reasonably be construed to authorize a review" of the additional issues given the "very specific and limited * * * scope" of the district court's remand order. *Ibid.* The district court therefore held that the ALJ's actions violated the Social Security Administration's rule that an ALJ must "follow the Appeals Council's remand order 'and may not take any additional action that is not inconsistent with the Appeals Council's remand order.'" *Ibid.* (quoting 20 C.F.R. 404.983, 404.977). The court also distinguished remands that, like the one at issue here, "contemplate[] the taking of new evidence and a *de novo* adjudication on the merits." *Ibid.*

2. Petitioner further contends that, to the extent that the decision below "allowed relitigation of an issue that was or could have been litigated" in the prior proceeding, it conflicts with this Court's decisions in *Rivet* v. *Louisiana*, 522 U.S. 470 (1998), and *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394 (1981). Pet. 11. Those cases hold that "'[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Rivet*, 522 U.S. at 476 (quoting *Moitie*, 452 U.S. at 398). Alternatively, petitioner argues that the decision below conflicts with other circuit court decisions holding that, under the "law of the case" doctrine, "[w]hen an appellate court has either expressly or by necessary implication decided an issue, that decision is binding in all later proceedings in the same case." Pet. 16 (citing *Key* v. *Sullivan*, 925 F.2d 1056 (7th Cir. 1991); *Horrell* v. *Chater*, 54 F.3d 787 (10th Cir. 1995) (Table); *Fogel* v. *Chestnutt*, 668 F.2d 100, 108 (2d Cir. 1981), cert. denied, 459 U.S. 828 (1982); and *Hooper* v. *Heckler*, 752 F.2d 83, 88 (4th Cir. 1985)).

As an initial matter, petitioner does not claim that the court of appeals' unpublished decision announces a new and incorrect standard for deciding claim preclusion, issue preclusion, and law-of-the-case issues. Instead, petitioner appears to argue that the court of appeals misapplied those doctrines to the facts of this case. The fact-bound claim that a court of appeals misapplied settled law (in an unpublished opinion) does not warrant this Court's review.

Petitioner's arguments are, in any event, unpersuasive. As the court of appeals explained, petitioner cannot prevail under a law-of-the-case or preclusion theory because the district court did not issue "a final

decision on the merits regarding her physical impairments and residual functional capacity." Pet. App. 5a-6a. See *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 502 (2001) ("a judgment 'on the merits' triggers the doctrine of res judicata or claim preclusion"); *Quern* v. *Jordan*, 440 U.S. 332, 347 n.18 (1979) (noting that the "doctrine of law of the case comes into play only with respect to issues previously determined"). As the court of appeals explained:

> [The district court's first opinion] did not constitute a decision on the merits regarding [petitioner's] residual functional capacity. The district court's opinion addressed only the two narrow errors committed by the ALJ in the initial hearing. The merit of the ALJ's determination regarding [petitioner's] physical capacity was assumed for the purposes of evaluating [petitioner's] claims regarding the ALJ's treatment of her combined mental and physical capacity. In other words, the district court held that *given* the ALJ's findings regarding physical capacity, the ALJ should have considered the combined effect of her mental and physical impairments and compared that full picture to Listing 12.05C.

Pet. App. 6a.

Construing its own opinion, the district court judge likewise found no issue preclusion because (a) "neither party in the earlier action actually litigated the finding that [petitioner] was limited to a reduced range of light work," and (b) "a finding regarding [petitioner's] residual functional capacity was not essential to the judgment actually rendered * * * in the earlier action." Pet. App. 28a. Furthermore, in the context of judicial review of agency action—where a reviewing court's task ends once it uncovers error in the an-

nounced grounds of the particular agency decision before it, see pp. 11-12, *supra*—principles of claim and issue preclusion should not be applied in a manner that precludes the agency having primary jurisdiction from re-examining the case on remand. Cf. *Chenery*, 332 U.S. at 200-201; p. 11, *supra*.[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 2003

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[6] Petitioner also argues (Pet. 14) that the court of appeals' decision conflicts with *Shalala* v. *Schaefer*, 509 U.S. 292 (1993), because it renders remand orders (even those that grant less than all the relief requested) "non-final." Petitioner appears to confuse the issue of finality for purposes of permitting appeal to a court of appeals with the concept of a final judgment on the merits for purposes of determining claim and issue preclusion. See *Clay* v. *United States*, 123 S. Ct. 1072, 1076 (2003) ("Finality is variously defined; like many legal terms, its precise meaning depends on context."). In this case, the district court's initial decision did not conclusively resolve the ultimate issue of petitioner's entitlement to benefits.